

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 10-cr-152-wmc

JEREMY VISOCKY,

Defendant.

DEFENDANT'S MOTION TO DISMISS INDICTMENT
FOR VIOLATION OF THE SECOND AMENDMENT

The Defendant, Jeremy Visocky, through counsel, hereby moves this Court to enter an Order dismissing the Indictment against him on the ground that the statute under which he is charged, 18 U.S.C. § 922(g)(3), violates the Second Amendment to the United States Constitution.

Visocky submits that Section 922(g)(3) is unconstitutional because it violates his Second Amendment right to keep and bear arms as that right has been explained in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). In making this argument, Visocky acknowledges that the Seventh Circuit has recently upheld the constitutionality of Section 922(g)(3). See *United States v. Yancey*, 621 F.3d 681 (7th Cir. 2010). In its ruling in *Yancey*, the Seventh Circuit relied heavily upon its prior ruling, upholding

the constitutionality of § 922(g)(9), in *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010) (*en banc*). Visocky respectfully believes, however, that *Skoien* was wrongly decided and, by extension, *Yancey* was wrongly decided as well. He, therefore, files this motion to preserve the issue for further review in the event the Supreme Court grants Skoien's petition for a writ of certiorari, which was filed on October 12, 2010.

Dated at Madison, Wisconsin December 6, 2010.

Respectfully submitted,
JEREMEY VISOCKY, *Defendant*

/s/ Michael W. Lieberman
Michael W. Lieberman, Bar # 1059034

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be served via the Court's CM/ECF system to Assistant United States Attorney Rita Rumbelow, this 6th day of December, 2010.

/s/ Michael W. Lieberman
Michael W. Lieberman